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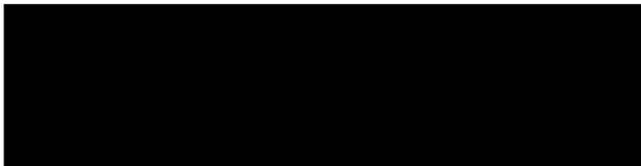


FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: MAY 04 2009
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IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
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 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. At the time she filed the petition, the petitioner was a postdoctoral researcher at the National Renewable Energy Laboratory (NREL), Golden, Colorado. 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.*

On appeal, the petitioner submits a brief from counsel 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 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 (USCIS)] 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 a statement accompanying the initial submission of the petition, the petitioner indicated that she has a “strong background in both the Pulp and Paper Technology and Chemical Engineering fields.” The petitioner stated that her “main task at the NREL is to develop the best technology to make ethanol from the lignocellulosic materials as an alternative transportation fuel,” and that her past experience in pulp and paper technology (which involved removing the lignin from wood pulp, leaving behind cellulose and other complex carbohydrates) has prepared her for research in converting biomass to fuel.

Several witness letters accompanied the petitioner's initial submission. A number of witnesses described the petitioner's background and the importance of her field of research, but offered little further detail; others provided additional information. [REDACTED], who supervised the petitioner's doctoral studies at the University of Maine, Orono, stated:

For the last four years, [the petitioner] has demonstrated exceptional research skills. Her novel PhD thesis called "Kinetics and Mechanism of Oxygen Delignification" has been well received in both academia and the industrial field. The following is a brief listing of [the petitioner's] important and original contributions to oxygen delignification, an important and environmentally friendly process used for the production of wood pulp.

#1: Designed and commissioned a new Berty Reactor for oxygen delignification

#2: Performed kinetic and mathematical modeling studies on oxygen delignification

#3: Conducted kinetic studies to determine the reaction mechanism and kinetic parameters

#4: Modeled the reaction rate of residual lignin in pulp during oxygen delignification based on elementary chemical equations.

[The petitioner] has made important contributions to our understanding of oxygen delignification, and I am sure that her published papers will be seen in the future as key original references in the field.

[REDACTED] Manager of Manufacturing Excellence at International Paper, Mansfield, Louisiana, described the petitioner's "work as an engineering summer intern in our mill" in 2005. The projects included "developing operational centerlines for a corrugating medium machine," and clearly had more to do with preparation of commercial paper products than with alternative fuel research, although Mr. [REDACTED] asserted that the petitioner's "expertise in wood chemistry and lignocellulosic material and her exceptional ability ha[ve] prepared her for her . . . current research activities in the bio-fuels field."

[REDACTED] a Principal Biochemical Engineer and Research and Development Manager at NREL, recruited the petitioner after encountering her work at a 2006 conference. [REDACTED] described the petitioner's current work:

[The petitioner] is currently working as a post doctoral researcher in the Biorefining Process R&D group I lead at NREL. . . . Through her academics focused on pulp and paper science and engineering, she has developed an in depth understanding of the composition, structure and physical and chemical properties of lignocellulosic materials. And through her thesis work using a differential reactor to study the kinetics and mechanisms of oxygen delignification of unbleached wood pulp she has gained

firsthand knowledge of lignocellulose fractionation processes. . . . After only a few months at NREL, [the petitioner] is already performing high quality work and making significant research contributions to the Pretreatment and Enzymatic Hydrolysis research task she supports.

a Project Manager with the Golden (Colorado) Field Office of the U.S. Department of Energy, stated:

[An] important part of Golden Field Office's mission is to oversee the National Renewable Energy Laboratory. . . . My role as a Project Manager has me directly overseeing the execution of a portfolio of projects focused on converting biomass to liquid transportation fuels. . . .

I do not know [the petitioner] personally. However, after reviewing her impressive resume and discussing her current work with a former colleague at NREL, I am very familiar with the area of her research in the production of biofuels from biomass. . . . One of the key technical challenges in the biofuels development path is the cost effective breakdown of cellulose and hemicellulose to fermentable sugars. This is precisely the research area she is currently focused on.

did not elaborate on the petitioner's individual contributions to the research efforts described above. He discussed the importance of the area of research, which addressed intrinsic merit and national scope, but he did not explain why it would be in the national interest for the petitioner, rather than another qualified researcher, to be conducting this research.

of Texas A&M University, who has "never worked with" the petitioner, offered more details about the petitioner's work. He stated:

[The petitioner] has made a number of contributions to better understand wood chemistry and oxygen delignification. In the past, kinetic studies of oxygen delignification were mostly performed in batch reactors where the hydroxide and dissolved oxygen concentrations change constantly with regard to time in the reactor. This makes it difficult to determine an accurate rate expression. Also the lignin and cellulose concentrations as well as the molecular weight of the cellulose are only established at the end of the experiment when the sample is removed from the reactor. [The petitioner] successfully developed a flow-through differential reactor to overcome these deficiencies. . . .

At NREL, [the petitioner] has applied different pretreatment and enzymatic hydrolysis methods to various biomasses, including switchgrass, corn stover, and wheat straw to get better biofuel conversions. Because of her strong pulp and paper background and expertise, she has provided the NREL biomass program with unique insight and knowledge.

In cellulosic ethanol production, effective pretreatment and high solids fermentation are critically important to reduce capital and operating costs. This is a major goal of [the petitioner's] research project. To meet these goals, [the petitioner] performed outstanding and independent research in pretreatment, enzymatic cellulose hydrolysis and ethanol fermentation at high substrate concentrations. Her achievements have been very impressive.

[REDACTED] of the University of California, Riverside, was an NREL official from 1978 to 1997. He stated:

I do not know [the petitioner] personally. However, after reviewing her curriculum vitae and discussing her work with my former colleagues at the National Renewable Energy Laboratory, I am confident that her work is most certainly within the national interest and that she more than meets the criteria for a national interest waiver. Our nation has greatly benefited and will continue to benefit from her expertise in lignin chemistry and biomass conversion technologies. . . . I believe her papers will be seen as key original references in the field.

[REDACTED] Senior Researcher and Laboratory Manager at InterChem Inc., Liberty, Texas, stated:

While at the University of Maine working on her doctoral dissertation, [the petitioner] developed a new "Berty Continuous Stirred Tank Reactor" used to investigate the kinetics and mechanism of oxygen delignification (N.B. this is currently the world's first reactor both developed and used for oxygen delignification research). [The petitioner's] hands on engineering this particular piece of equipment is by no means a minor accomplishment; rather it is significant and will be utilized in industrial applications by research scientists in the pulp and paper field for many years to come. [The petitioner's] original findings in oxygen delignification will allow scientists to proceed forward in research by allowing them to utilize their time more efficiently. An added benefit of the oxygen delignification process is its environmentally [*sic*] friendliness – in that it replaces the necessity of utilizing chlorine to remove lignin from the woody material. [The petitioner's] findings of first order reaction kinetics can be utilized by the pulping industry to improve the production yield and therefore improve the economy.

The petitioner submitted documentation showing that she participated in peer review of manuscripts submitted by others for journal publication. Every dated document referring to the petitioner's peer review work is dated after the petition's July 5, 2007 filing date. Therefore, even if peer review were a qualifying activity, these activities cannot retroactively establish that the petitioner was already eligible as of the filing date. The petitioner of an immigrant visa petition must establish eligibility at the time of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

Furthermore, dates aside, the petitioner did not establish that such participation is in any way unusual or a privilege reserved for a relative few. A “form” letter with the salutation “Dear Valued ACS Reviewer” suggests that such letters are printed in bulk, for sizeable numbers of reviewers.

The petitioner submitted copies of her articles and abstracts as well as her doctoral thesis. The petitioner claimed that her writings had been cited an aggregate total of 16 times. The only documented published citations, however, are the petitioner’s self-citations of her own prior work. Self-citation is a common and accepted practice, but it is not indicative of wider impact or influence. A citation to the petitioner’s work appears in [REDACTED] unpublished master’s thesis, submitted on August 27, 2007, nearly two months after the petition’s filing date. The thesis identified [REDACTED] instructor as [REDACTED] one of the petitioner’s mentors. The works cited are the petitioner’s own doctoral thesis (also written under [REDACTED] guidance) and a 2006 conference presentation co-authored by [REDACTED].

The director denied the petition on July 21, 2008. The director noted that, while the petitioner claimed a number of citations of her work, she documented only one that was not a self-citation (the aforementioned thesis). The director acknowledged the overall importance of the petitioner’s area of research, but found that the record lacks “demonstrable evidence of her influence,” despite witnesses’ speculation that the petitioner’s work will eventually be regarded as important.

On appeal, counsel lists the petitioner’s past accomplishments and asserts: “we had shown evidence that the petitioner’s past record achievement justifies projections of future benefit to the national interest.” Simply listing the petitioner’s past activities, however, does not establish eligibility for the waiver, even if counsel asserts that those prior accomplishments are “major contributions.” The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts that the petitioner’s “publications have . . . been cited at least 13 times by other researchers and academics in the field.” As the director already noted in the denial notice, the petitioner did not document these citations; she simply asserted their existence. The record does not contain any published independent citation of the petitioner’s work, and even if the number of claimed citations is correct, there is no evidence to show that any of the published citations are independent rather than self-citations. When the director observes that a given claim is unsupported by evidence, it is no remedy simply to repeat the unsupported claim.

One paragraph after claiming that the petitioner has accumulated a “particularly impressive” citation record, counsel protests that the director “insisted that Petitioner/Appellant must demonstrate proof of heavy citations.” The director did not “insist” upon evidence of heavy citation. Rather, the director noted that citations are one objective means of measuring a researcher’s impact. It is true, however, that if the petitioner claims independent citation of her work, she must actually document such citation.

Counsel notes that the petitioner “received the Queens [sic] Scholarship for the Asian Environment Development Program from the Government of Thailand,” which counsel claims “is one [of] the most prestigious awards available in Thailand.” The petitioner received this scholarship in 2001, while still a master’s student; established, fully-credentialed scientists are ineligible for scholarships because their education is complete. It seems, therefore, highly unlikely that a prize specifically reserved for students is one of Thailand’s “most prestigious awards.”

Counsel asserts that the director should have given more weight to the witnesses’ letters, because “it is not for the service center to judge how one should compare an alien beneficiary’s contributions . . . against others.” It is, however, for the service center to judge who qualifies for a waiver and who does not. By counsel’s own logic, this decision cannot be left to the petitioner’s colleagues who have no apparent expertise in immigration law. The assertions of witnesses are taken under advisement, but the opinions of those witnesses are not, and cannot be, binding upon USCIS adjudicators (who, in turn, must be free to compare witnesses’ claims to the objective documentation in the record).

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.