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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
LIN 08 167 50945

Date: JAN 07 2010

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.

Perry Rhew
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 (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 an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks to employment as a research associate. 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, counsel submits a brief and additional evidence. While not all of counsel's assertions are persuasive, for the reasons discussed below, we are satisfied that the petitioner has established her eligibility for the benefit sought.

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. from the University of Iowa. 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).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

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, 217-18 (Comm'r. 1998) (hereinafter “NYSDOT”), 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. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* 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. *Id.* at 217-18.

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. *Id.* at 219. 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. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, hydroscience, and that the proposed benefits of her work, improving our understanding of rainfall and its movements over land, 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. 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 she 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.

At the University of Iowa as a Ph.D. student and a postdoctoral researcher, the petitioner worked under the supervisor of [REDACTED]. [REDACTED] explains that the petitioner's Ph.D. research involved the fundamental concepts in probable maximum precipitation (PMP) estimation for flood design. [REDACTED] asserts that the petitioner used mesoscale modeling and hydrometeorological analysis to test assumptions, highlighting deficiencies in current methods. While a postdoctoral research associate, according to [REDACTED] the petitioner catalogued the largest U.S. rainstorms in the past 50 years and analyzed the data using state-of-the-art statistical techniques and regional frequency estimation approaches. [REDACTED] states that, based on this work, the petitioner created a storm catalog that contributes to the field's understanding of the hydrometeorology of extreme rainstorms in the United States.

The petitioner submitted evidence of her published articles and abstracts and her presentations at conferences. The director correctly noted that publications and presentations do not necessarily set a researcher apart from other researchers. At issue is whether the published and presented work has proven influential. The director noted the lack of evidence of heavy citation and concluded that the petitioner had not established her influence in the field. On appeal, counsel references evidence of citation being submitted as exhibit A. This exhibit, however, consists solely of the petitioner's self-serving curriculum vitae, which does not mention citations. None of the other evidence submitted on appeal constitutes evidence of citation. The unsupported assertions of counsel do not constitute evidence. *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). Nevertheless, while citations can certainly constitute useful and probative evidence of the influence of a given article, it is not the only type of evidence that can demonstrate an alien's influence. For the reasons discussed below, in this matter, we find sufficient evidence other than citations that, *in the aggregate*, adequately demonstrates the petitioner's influence in the field.

Notably, the petitioner submitted a letter from [REDACTED], a Hydraulic Engineer with the Flood Hydrology and Emergency Management Group at the Bureau of Reclamation (USBR), U.S. Department of the Interior. [REDACTED] explains that he has been researching extreme flood and extreme storm rainfall as part of the USBR's Dam Safety Program for the past 12 years. [REDACTED] asserts that he first became aware of the petitioner's research in 2005 and 2006 and finally met her at a conference in 2006, at which time he developed a professional relationship with her. [REDACTED] states that he drafted a proposal to initiate a project to develop guidance on PMP estimates for the Eastern United States with the objective of providing the U.S. Nuclear Regulatory Commission (NRC) staff with a supplement to the National Weather Service Hydrometeorological Reports (HMR) for estimating PMP. [REDACTED] explains that this project, which was approved, "will significantly influence designs and potential costs of new and upgraded nuclear facilities and dams." According to [REDACTED] two papers by the petitioner were included in the 18 papers on which his proposal was based.

explains the significance of the petitioner's papers used in his proposal. Specifically, he states:

In her two articles, [the petitioner] specifically provided detailed and convincing methodologies to evaluate PMP assumptions and concepts. She has found flaws in the current methodology which had never been reported before. [The petitioner] further provided new approaches to improve PMP estimates and reported that the current PMP is overestimated by about 7% in the Chicago area. As part of her research, [the petitioner] has also developed a unique extreme storm data set for the Central and Eastern United States. Our proposal was inspired by her findings, and her methodology and data formed the basis of our proposal.

notes that the petitioner was previously employed at the University of Iowa. The approved proposal, which the petitioner also submitted, indicates that the USBR and the University of Iowa entered into an Interpersonal Agreement whereby the petitioner would be able to participate on the project. states that he has contacted the petitioner's current employer to assure that she remains available to provide continuous support and guidance on the project.

In addition to approved proposal, the petitioner submitted July 16, 2007 electronic-mail (e-mail) message to the petitioner expressing interest in her work and a future collaboration. notes the importance of the petitioner's techniques and requests any recent data she has produced, including unpublished data she is willing to share. concludes with a request to visit the petitioner at the University of Iowa and potentially secure USBR funding on her behalf.

The petitioner also submitted an e-mail from at the Bureau of Meteorology in Australia referencing previous correspondence that proved useful and advising that he had "started using some of the analysis which [the petitioner has] carried out and applied them to Australian data." In the interest of "completeness in our investigation," requests a copy of the petitioner's unpublished thesis.

Finally, the petitioner submitted an e-mail from Office of Hydrology, National Oceanic and Atmospheric Administration (NOAA) requesting a copy of the petitioner's recent poster presentation. While this e-mail does not suggest that the poster was eventually utilized by NOAA, in combination with the two previous e-mails, it is consistent with a finding that the petitioner's work has been recognized and utilized beyond the University of Iowa where she worked at the time of filing. We acknowledge that the petitioner submitted a letter from on appeal affirming the significance of the project on which the petitioner is now working as an employee of NOAA's Hydrometeorological Design Studies Center (HDSC), a unit within branch.

The petitioner also submitted evidence of her standing in the field which, if not directly indicative of her influence, is certainly consistent with such an influence and constitutes objective evidence supporting the letters and e-mails discussed above. As of the date of filing, the petitioner was a member of the H Precipitation Executive Committee of the American Geophysical Union (AGU). In addition, the petitioner successfully proposed several AGU conference sessions, for which she solicited abstracts. The petitioner was also invited to chair an AGU conference session. [REDACTED], Chair of the AGU Precipitation Committee, asserts that the committee has only 23 members from “across the globe” and that the petitioner was invited to join the committee based on her research on rainfall and floods. [REDACTED] explains that upon joining the committee, the petitioner collaborated with other committee members to convene special sessions that have attracted 20 submissions and attracted media attention. The record contains an e-mail addressed to the petitioner regarding a press conference.

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 evidence in the aggregate, and further testimony in the record, establishes that the hydroscience 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.