U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

JAN 11 2002

File: [redacted] Office: Nebraska Service Center Date:

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER: Self-represented

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations 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 he filed the petition, the petitioner was a doctoral student and research assistant at Washington State University ("WSU"). 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 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. -- The Attorney General may, when he 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 an M.S. degree in Chemical Engineering from WSU. 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 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 Service 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 Service 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 Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 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.

The petitioner describes his research activities:

> I have been working on a project among this nation's largest . . . nuclear waste clean up actions at [the] Department of Energy's Hanford Site which was chosen in 1943 for the Manhattan Project to produce plutonium for the world's first nuclear weapons. Today, the focus of activities at Hanford is site clean up and environmental restoration, scientific and environmental research. . . .
>
> In my research, I particularly focus on an experimental way to determine the relationship between waste tank simulant re-suspension behavior and the physical properties of submerging liquid. What we did is conducting [sic] experiments with

> simulated wastes to find the chemical and physical processes that are responsible for hydraulic mixing and entrainment behavior. We are the only research group which ha[s] obtained valuable experimental data about [the] relationship between zeta potential (an electro-chemical property of small particle[s] in liquid) and the entrainment of colloidal (extremely small) particles in a submerged jet. I am the person in charge of experimental investigation and [the] whole mechanical and electronic experimental device design and building due to the equipment [being] commercially unavailable.

Along with background documentation pertaining to the contaminated Hanford site, the petitioner submits several witness letters. Professor Richard L. Zollars, chair of the Department of Chemical Engineering at WSU, states that of the 177 large storage tanks at Hanford, "67 are known to be leaking and an equal number are suspected of leaking. The resulting contamination . . . is slowly moving towards the Columbia River." Prof. Zollars states that the effort to clean up the Hanford site "will be one of the largest clean-up efforts in US history, costing an estimated 40 to 60 billion dollars." Prof. Zollars indicates that the petitioner's research focuses on the removal of radioactive sludge from inside these storage tanks, a task complicated by numerous factors such as the tanks' underground location and the need to operate equipment by remote control owing to dangerous radiation levels. Prof. Zollars discusses the petitioner's doctoral work:

> He is now studying the hydrodynamics associated with jet flow as a means of understanding how the fluid motions and sludge particle characteristics interact to cause the particles to become entrained within a water jet. This, combined with his previous studies, will put him in a unique position to understand and contribute to our ability to safely recover and immobilize the hazardous wastes currently stored within the tanks at the Hanford site.

Dr. Yong Wang, senior research engineer at Pacific Northwest National Laboratory, states that the petitioner "is developing a highly visible and viable technology, a two-pump system," to allow for solid wastes from leaking tanks to be collected and consolidated into new, double-shelled tanks. Dr. Wang refers to the petitioner as "the team leader" and "the only one doing both fundamental and practical application research in this area."

Dr. Shirley X. Qiu, senior development engineer at Schlumberger Dowell, states that the petitioner's work allows for "the resuspension process [to] be optimized," thereby maximizing the efficiency with which the contaminated sludge can be removed from the compromised tanks. Dr. Qiu states that the petitioner's "contribution to DOE's nuclear waste treatment project is unique and has immediate impacts on how we regulate the practice of retrieval of waste tank sludge in Hanford Site and other nuclear waste storage sites nationwide."

The petitioner submits copies of news articles describing efforts to clean up the Hanford site. The articles observe that one obstacle to these efforts involves resuspension of colloidal particles so that they can be removed from the aging tanks. It is this problem that the petitioner's project seeks to address. Nevertheless, the articles do not establish the extent to which the petitioner's efforts have already affected actual cleanup efforts, nor do they show that the petitioner's work has attracted attention outside of his Washington-area collaborators.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted copies of previously submitted documents, as well as a transcript of Senate testimony by then-Secretary of Transportation Federico Peña. Secretary Peña addresses general issues such as site cleanup but does not mention the petitioner or the petitioner's project.

In a statement, the petitioner stresses the importance of his work. The petitioner quotes several Department of Energy officials regarding the importance of cleaning up radioactive waste in general, and the Hanford site in particular.

The director denied the petition, stating that the intrinsic merit of the petitioner's work is "immediately apparent" and that the petitioner's "employment can be characterized as national in scope," but the petitioner has not "explained why the labor certification process is inappropriate in this case." The director further determined that the petitioner has not shown that "his contributions do so exceed those of his peers as to substantially service the national interest." The director noted the submission of letters from the petitioner's collaborators, but stated that the record "does not establish that the alien's work is known and considered unique outside his immediate circle of colleagues."

On appeal, the petitioner asserts that "restoring the environment of various DOE Sites is an urgent and long-term task." The petitioner submits documentation to show that the remediation of the Hanford site is expected to last until 2046. This evidence speaks to the intrinsic merit of the petitioner's work, which the director has not contested.

The petitioner submits copies of electronic mail messages discussing a possible postdoctoral position for the petitioner at Oak Ridge National Laboratory. The petitioner asserts that his recruitment for the postdoctoral position shows that his reputation has extended beyond his collaborators in Washington.

The record, however, does not establish the nature of Oak Ridge National Laboratory's recruitment process for postdoctoral researchers. Postdoctoral positions are inherently temporary, constituting a form of advanced training rather than career positions.

The petitioner asserts that the labor certification process will impair his mobility because he "can only work on one site" while the certification is pending. The petitioner's initial submission focused heavily on the specific importance of remediating the Hanford site, where more than half of the nation's strategic plutonium was synthesized during the cold war; yet on appeal, the petitioner asserts to keep him at Hanford would be contrary to the national interest. The petitioner's evident desire to leave Hanford for Oak Ridge significantly diminishes the weight of the bulk of the evidence, which focuses on Hanford. Even if the petitioner were to stay at Hanford, the record does not show that the petitioner's individual contribution has had a disproportionately great effect on the remediation effort, as compared with the efforts of other researchers seeking to clean up the heavily contaminated site.

The petitioner's appeal does not establish that his work, in particular, has attracted significant attention among researchers seeking to clean up hazardous radioactive waste. Certainly, as a doctoral student, he has contributed to a specific project aimed at cleaning up one heavily contaminated site, but in the absence of a larger context we cannot determine the significance of the petitioner's contribution (as distinct from the overall importance of cleaning up the Hanford site).

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, 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.