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U.S. Department of Justice

Immigration and Naturalization Service

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 18 2002

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

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:

[redacted]

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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. The petitioner seeks employment as a lawyer and is employed as the senior law clerk for a judge on the United States Court of Appeals for the Tenth Circuit. 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 earned his juris doctor degree from Yale Law School in 1996. 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 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.

Counsel describes how the petitioner will serve the national interest in a letter accompanying the petition:

> The U.S. Court of Appeals for the Tenth Circuit handles a wide variety of vital constitutional, civil, and criminal matters. Its jurisdiction consists of the states and territories of Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming, and parts of Montana and Idaho- an area that encompasses a large and important portion the U.S. population (in excess of 14 million people). The work of the Tenth Circuit is essential to the fair and efficient functioning of the U.S. federal judiciary and to our constitutional system of government. As a member of the Legal Staff of Judge Carlos F. Lucero, [The petitioner] plays an important role in how decisions are researched, drafted, and ultimately, handed down by the Court.
>
> * * *
>
> The work of the Tenth Circuit is essential to the national interest of this nation. The Court's work is integral to the effective administration of the American justice system as a whole. Fresh interpretations of constitutional principles and other important legal issues are produced by the Court on a regular basis. These decisions pertain directly to the everyday lives of all Americans. The continuing

> fair and efficient functioning of the U.S. Court of Appeals system is fundamental to the stability and cohesiveness of modern American Society.

The petitioner submits several witness letters. Judge Carlos Lucero, United States Court of Appeals for the Tenth Circuit, states:

> Based on my knowledge of his exceptional academic credentials, and the truly extraordinary job he does in my chambers on behalf of the United States Court of Appeals, I am happy to say that in my judgment his employment is very much to the benefit of our country.
>
> Let me start with [the petitioner's] credentials for the position he holds with me. The petitioner came to my chambers from Yale Law School with exceptional academic credentials. I was particularly impressed that he had served as the Editor-in-Chief of the Yale Journal of Regulation, our nation's leading scholarly journal of administrative law and regulatory matters. This aspect of [the petitioner's] background and expertise makes him an invaluable resource to the development of governmental regulation far into the future. But there is more. For example, his expertise in environmental law matters, having worked closely in a teaching and research capacity with Professor Dan Esty—the highly-regarded Director of Yale's Center for Environmental Law and Policy—and having published several articles in the field, makes him an invaluable national resource in this area as well.
>
> Aside from his exceptional legal credentials, [the petitioner] brought to my chambers an exceptional background in policy analysis. Selected for a Kennedy Scholarship to Harvard University, Britain's equivalent of our Rhodes Scholarship, he earned a masters' degree in public administration from the Kennedy School. As at Yale, his academic record at Harvard was excellent. His research and analytic work at the Center for International Environmental Law and at the World Bank further buttressed his environmental policy credentials.
>
> But his credentials, highly impressive though they are, did not prepare me for the superlative manner in which [the petitioner] serves as my clerk. [The petitioner] is the best clerk I have ever had the pleasure to work with, and, in my estimation, is undoubtedly one of the best there is out there. His research is truly exceptional and his writing superlative. He is invariably clear and lucid, no matter how complex the material addressed. His oral counsel, too, is extraordinarily measured and judicious.
>
> Although the internal workings of federal judges' offices must of ethical necessity remain largely confidential, I am liberty [sic] to explain that [the petitioner] carries out these various functions with respect to the full range of cases that are presented to the Tenth Circuit. In many instances, cases are orally argued to

> myself and my judicial colleagues. At all the stages of the process related to oral argument cases, [the petitioner] excels, and my final published opinions have benefited inestimably from his invaluable assistance. He is my first and best recourse in disposing of the complex issues such cases present.
>
> I must stress that I am not the only one benefitted by [the petitioner's] exceptional legal work. Our national legal system benefits from first-rate law clerks and [the petitioner] is one of these. Litigants now and in the future are greatly advantaged by the development of clear, thorough, and well-reasoned appellate precedents. The administration of justice in the Tenth Circuit and beyond is directly benefitted from his work. In short, [the petitioner] serves to advance this country's jurisprudence in significant and laudable ways. As a country, we are lucky to have him.
>
> * * *
>
> I am doubtful that I will encounter another legal mind of [the petitioner's] caliber within chambers. I am fortunate to have him, and the country is too. Under these circumstances, it would be a tragedy to let him escape to England. The United States of America has always attracted to its shores the best and the brightest minds of each generation. He is among those privileged few. America will be a better place with having him remain among us. It is squarely in the national interest that he be permitted to do so. I give him the very highest recommendation possible.

Judge Guido Calabresi, United States Court of Appeals for the Second Circuit, and former Dean and Professor of Law at Yale University, states:

> I am writing you about [the petitioner], who was a student of mine at the Yale Law School and who is currently clerking for Judge Carlos Lucero of the United States Court of Appeals for the 10th Circuit.
>
> [The petitioner] was a spectacularly good student. Even among the extraordinarily well qualified students at the Yale Law School he stood out. He was, in every sense, exceptional. He showed this not only in his class work-- which was, as I have said, remarkably good-- but also in any number of other activities while at the Yale Law School. He was, for example, the Editor-in-Chief of the *Yale Journal of Regulation* and led that splendid law review through a truly marvelous year.
>
> I am not given to exaggeration. But I think that in [the petitioner's] case it can truly be said that it would be in the national interest if he were able to stay and work in this country.

Professor Jerry Mashaw, Yale Law School, states:

> I write at the request of [the petitioner] who is applying for labor certification on the ground that his current employment in the United States is in the national interest.
>
> In my view this affirmation is certainly correct. The work that recent graduates of good law schools do for the federal judiciary is crucial to the expeditious and competent resolution of a large number of complex cases that come before those judges. [The petitioner] is a particularly talented young lawyer and was an exceptional student in my classes. Much of the work that he is now doing relates directly to the subject matter of those courses, and I view the United States as particularly fortunate to have a practitioner of [the petitioner's] talent working on these cases.

Daniel Esty, Professor at Yale Law School, and Director of the Yale Center for Environmental Law and Policy, states:

> I know [the petitioner] first as a student. He attended Yale Law School from 1993 to 1996, where his academic record was highly distinguished. He worked on a number of research papers with me. All were excellent- and indeed among the very best that I have seen in my time at Yale. Given his pre-Yale achievements, that was hardly a surprise. [The petitioner] first came to the United States after winning a Kennedy Scholarship to Harvard University. (That prestigious award is the United Kingdom's version of our Rhodes Scholarships to Oxford University, and it is quite a coup to have a Kennedy Scholar apply to remain in the United States — Britain's loss is certainly our gain.) He had also worked closely with James Cameron, Director of the Foundation for International Law and Development, who is one of Britain's foremost figures in this field, and with Andrew Steer, the Director of the World Bank's Environment Department, who is widely-respected by scholars and practitioners alike. [The petitioner's] study with Mr. Cameron of the precautionary principle of environmental policy stands as the leading scholarly analysis in its area.
>
> But I also know [the petitioner] as a professional collaborator in several capacities.
>
> First, he served as the Editor-in-Chief of the *Yale Journal on Regulation.* Many scholars regard the Journal on Regulation as the nation's most prestigious and important journal of administrative law. I serve the *Journal on Regulation* in an advisory capacity, and was greatly impressed by [the petitioner's] expertise in managing the Journal's affairs. The Editor-in-Chief position requires a great deal of expertise in administrative law matters; indeed, the list of past editors reads like a who's who of administrative law scholarship and practice. During his tenure, not only did the Journal maintain its usual high standards of cutting-edge scholarship,

but it organized and published the proceedings of a ground-breaking symposium on emerging federalism issues. I was closely involved in the symposium, and its final results owed a great deal to [the petitioner's] editorial hand, legal expertise, and organizational skill.

Second, I have collaborated with him as a researcher and editor with respect to my own work. For instance, we worked very closely together on a study of environmental federalism, published in the *Michigan Law Review* in December of 1996. Quite simply, this large-scale study could not have been completed without him. Much of it grew out of extensive discussions between us, and I relied on him absolutely for extraordinary research input and a firm editorial hand. His analysis of these complex issues was always challenging, insightful, and exceptionally well-reasoned, and his expertise of the highest order.

Finally, [the petitioner] served as a teaching assistant for an environmental law and policy course that I teach at the Law School and the Forestry School. My teaching assistants have to be exceptionally conversant with the subject matter of this course because they must lead student sections through a deeper analysis of the issues than lectures can provide. [The petitioner's] thorough and intimate knowledge of the issues stood him in excellent stead in this regard. So highly do I think of him that I requested he assume lecturing responsibility for certain portions of the class. He performed this responsibility admirably, and I have incorporated his materials and approach into the class materials for future use. He rapidly revealed himself as the intellectual equal of any teacher at Yale University, and I treated him accordingly.

Professor George Priest, Yale Law School, states:

I have been teaching at the Yale Law School for eighteen years. [The petitioner] is one of the most exceptional students I have had in my career here. He is extremely smart. He is imaginative. He is witty and a serious critical thinker. He is articulate and dynamic. He is a perfect example of the "brain drain" that the United States should encourage to retain its position as a leader of the Western world.

[The petitioner's] career here at Yale Law School was truly exceptional, culminating in his selection as Editor-in-Chief of the Yale Law School's *Journal on Regulation*. Based upon his extraordinary credentials, I selected him to the prestigious position of John M. Olin Fellow in Research during his period here.

Professor Carol Rose, Yale Law School, states:

[The petitioner] was a student in two of my classes at the Yale Law School, Property and Environmental Law. While he performed very well in Property, he truly came into his own in Environmental Law. He came into the class knowing a good deal about environmental policy, and he quickly established himself as one

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> of the chief contributors in what turned out to be a very vocal and articulate class. He was engaged, challenging, and inquisitive in the best sort of way- the kind of questioning of someone seriously interested in the subject at hand. He wrote an excellent exam, one of the best among a very fine group of students.
>
> In addition to his outstanding classwork, [the petitioner] also worked closely with the staff members of two of the Law School's journals, the *Journal on Regulation* and the *Journal of Law and Public Policy*. From what I understand, his journal work was of star quality.
>
> In short, [the petitioner's] performance at the Yale Law School shows him to be a man of great independence and intellectual talent, particularly in areas relating to environmental law, public policy and regulation- precisely the areas where he is now directing his very considerable abilities.

Joseph Nye, Dean of the John F. Kennedy School of Government, Harvard University, states:

> [The petitioner] was my student here at Harvard earlier in this decade. He was an extremely bright student, ranking near the top of a highly selected group. He then went on to Yale Law School, and to clerk for a judge on the Tenth Circuit Court of Appeals. This exceptional record of success is quite keeping with his intellectual skills and perseverance.

Professor James Cameron, Director of the Foundation for International Environmental Law and Development, states:

> [The petitioner] was without question the most brilliant research assistant I have ever worked with. I knew of his outstanding academic ability when I offered him the opportunity to work as a volunteer at the Foundation for International Environmental Law and Development at the University of London. He managed to adapt academic ability in the field of political science to international environmental law instantaneously, which impressed me enormously. I worked with him on a new principle of international environmental law- The Precautionary Principle- producing two substantial pieces of writing which have become perhaps the most authoritative texts on the subject. Even though I began by explaining the principle to [the petitioner] the final product owed more to his writing and thinking skill than to mine. [The petitioner] has all the right skills for a hugely successful career. Enormous intelligence, excellent writing, speaking and communication skills, and determination to take his own path.
>
> I was so convinced of [the petitioner's] exceptional ability that I rapidly introduced him to the international negotiations for the Climate Change Convention, placing him on a government delegation where he was able to offer practical assistance in a very demanding atmosphere.

> When [the petitioner] expressed an interest to go to the U.S. to study his JD rather than stay in England, I introduced him to my friend Dan Esty at Yale. Knowing of Dan's exacting standards, in terms of brain-power and energy, I felt entirely comfortable in telling Dan that of all the students and interns that have passed through the various institutions that I had responsibility for, [the petitioner] was the one I would most like to hire.

Andrew Steer, Director of the Environment Department for the World Bank, states:

> I am writing to support [the petitioner's] application for labor certification. While I was Director of the Environment for the World Bank, for two years, [the petitioner] was a brilliant and active member of our team. In our work in the environment department, he brought remarkable research and writing skills and a singular ability to digest, analyze, and diagnose policy. Rarely in my twenty years at the World Bank have I met a person of his age who had the ability to look closely at the finer details and remain completely aware of the larger issues at hand.

In addition to the testimonial letters, the petitioner submits his resume and academic transcripts from the University of Oxford, Harvard University's John F. Kennedy School of Government, and Yale Law School. This documentation clearly reflects the petitioner's notable academic achievements.

The petitioner provides evidence he served as the Editor-in-Chief of the *Yale Journal on Regulation* and submits proof of three of his published works. The petitioner's article entitled "Environmental Strategies for the Developing World" was co-authored with Andrew Steer, his supervising director at the World Bank. The petitioner's articles entitled "Addressing Uncertainty: Law, Policy and the Development of the Precautionary Principle" and "Precautionary Principle and Future Generations" were both co-authored with James Cameron, the petitioner's supervising director at the Foundation for International Environmental Law and Development. James Cameron refers to the petitioner as "the most brilliant research assistant I have ever worked with."

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Department of Transportation. In response, the petitioner has submitted arguments from counsel and an additional letter from Judge Carlos Lucero.

Counsel argues persuasively that the petitioner's field possesses substantial intrinsic merit, and that, the petitioner's work is, by nature, national in scope due to the influence that decisions from the Tenth Circuit Court of Appeals have across the nation.

In regards to establishing that the national interest would be adversely affected if labor certification were required for the petitioner, counsel argues that "the labor certification process would not

assure Judge Lucero a senior clerk of [the petitioner's] proven scholarship, expertise, and effectiveness because the objective minimum qualifications for law clerks of the [petitioner's] seniority are satisfied by a number of U.S. citizens."

Counsel adds that the petitioner's legal and policy expertise enable Judge Lucero to make "better decisions." Further, counsel states that the petitioner's "employment responds to Judge Lucero's need and constitutional obligation to decide cases and develop federal judicial precedents at the very limits of his judicial ability." These arguments demonstrate the influence Judge Lucero has upon the legal profession but do not reflect the specific contributions and achievements that the petitioner has made in his field that would set him apart from others in the legal profession. Because, by statute, exceptional ability is not by itself sufficient cause for a national interest waiver, the benefit which the petitioner presents to his field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. 204.5(k)(3)(ii)(F).

In his second letter, Judge Carlos Lucero describes how the petitioner's work is significantly superior to that of other qualified candidates for clerkships:

> The knowledge he brings as a distinguished scholar of comparative constitutional history provides a unique perspective on American constitutional jurisprudence, which is not shared by other American federal law clerks, and which directly enables me to think through and articulate opinions that strictly adhere to our own constitution, weighed not only by contemporary standards but validated also by reference to the unique history of our distinct constitutional development. Suffice to say that clerkship candidates of his caliber simply do not exist. I should know: I receive somewhere around 400 applications from interested parties every year. Of course, some of these applicants are qualified, in an objective sense, for federal clerkships. The job, as a job can be done by any of the very top graduates of our top law schools. Stated bluntly, few, if any, can do it as well as he can.
>
> His writing is exceptional; his research extraordinarily brilliant; his counsel and judgment are unrivaled in wisdom and good sense. As a result, his contribution to my chamber's output, and thus to our nation's jurisprudence and our national interest, is truly exceptional, altogether remarkable, and of substantial and unequaled importance. Judge Coffin, a First Circuit Judge, and a highly distinguished colleague who has made an impressive and authoritative study of the Federal Courts of Appeal, writes of those "happy occasions" when "clerk-judge collaboration" results in an experience of shared creativity." Frank M. Coffin, On Appeal: Courts, Lawyering, And Judging, at 209 (Norton 1994). With [the petitioner] at my side, those happy occasions are in no sense occasional; they are a constant, and they enable me to perform optimally as a judge. It is simply the case that I have turned to [the petitioner] whenever the most difficult cases have been presented with complete assurance that his unique skills and knowledge in constitutional, administrative, and regulatory law will aid me in publishing better

> decisions. Without running afoul of the Judicial Code of Conduct let me give you one suggestion of how important his work is. In a significant administrative law case, [the petitioner] was integral to my development and articulation of a new standard for reviewing agency interpretations of statutes. The solution we developed is without precedent in the Courts of Appeal; yet the issue addressed is likely to recur in other jurisdictions. The Tenth Circuit's precedent will unquestionably serve to elucidate the complex issues presented by similar cases, and thereby contribute to their resolution. That is indeed a significant contribution to the national interest. As another example, after I have come to penultimate closure on final decision working in tandem with other clerks in my chambers, I then turn to [the petitioner] for a final critique. His analysis and critique of the work of other clerks often results in an improved product.
>
> All good clerks help those of us in the federal judiciary perform our work. That is why these positions were created and why we all strive to hire the best and the brightest. But in my experience as a federal judge, only one, [the petitioner], has helped me to do it better. His contribution is exceptional, and by an order of magnitude above that of his colleagues and his predecessors. It is squarely in the national interest that [the petitioner] continue to provide his unique perspective on, and contribution to the development of, United States constitutional and statutory law.

The petitioner has clearly demonstrated exceptional performance in the fulfillment of his duties as senior law clerk for Judge Lucero. We do not question Judge Lucero's statements of support for the petitioner. However, a petitioner seeking a national interest waiver must persuasively demonstrate that the national interest would be adversely affected if a labor certification were required for the alien. The petitioner must demonstrate that it would be contrary to the national interest to potentially deprive the prospective employer of the services of the alien by making available to U.S. workers the position sought by the alien. The labor certification process exists because protecting the jobs and job opportunities of U.S. workers having the same objective minimum qualifications as an alien seeking employment is in the national interest. An alien seeking an exemption from this process must present a national benefit so great as to outweigh the national interest inherent in the labor certification process.

Stated another way, the petitioner, whether the U.S. employer or the alien, 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 cannot suffice to state that the alien possesses useful skills, or a "unique background." As noted previously, regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. Likewise, it cannot be argued that an alien qualifies for a national interest waiver simply by virtue of playing an important role in a given project, if such a role could be filled by a competent and available U.S. worker. The alien must clearly present a significant benefit to the field of endeavor. Judge Lucero's letter fails to

demonstrate sufficient evidence of the petitioner's specific contributions and achievements which have influenced the legal field as a whole.

The director denied the petition, stating:

> The record indicates the alien petitioner's current position as a senior law clerk is his first and only employment since receiving his juris doctor degree in June 1996. It can be assumed that the alien petitioner entered the law field in an entry level position and will advance upward during his professional career. Although three years experience is commendable, three years is a relatively short amount of time in comparison to someone who has spent twenty or thirty years or even an entire lifetime advancing up the ladder in the same field of work.
>
> While the alien petitioner has received praiseworthy recommendations from his employer, it is noted that the alien petitioner's job is to provide support to the judge in various ways. Additionally, it is noted that the alien petitioner has not branched out on his own accord.
>
> An overall view of the record suggests that the alien petitioner has played an important role in the activities directed by his present employer and colleagues. It also appears that the petitioner was the primary motivator/investigator behind several projects. While national interest hinges on the prospective national benefit, it must be clearly established that the alien petitioner's past record justifies projections of future benefit. The alien petitioner's assurances cannot suffice to establish prospective national benefit. In the case at hand, the record does not establish that the alien petitioner's past record justifies projections of substantial future benefit.
>
> The record contains evidence that the alien's work has resulted in several publications. However, original contributions, publications and presentation of research work are inherent to the position of a lawyer. The fact that the alien was successful in his endeavors is not necessarily sufficient to meet the national interest threshold. The evidence must clearly demonstrate that his contributions have influenced the field to a substantially greater extent than those of other qualified researchers also making contributions to that field.
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> The record contains testimonial letters from his present employer and/or colleagues and his former instructor. However, these testimonials do not establish that the alien petitioner's work is known and considered unique outside his immediate circle of colleagues. The record is not persuasive, without corroboration from disinterested parties, that the alien petitioner's work is known and considered unique. Nor do the letters establish that the alien petitioner's work would result in an appreciable, immediate improvement nationally or internationally in the field of specialty. Furthermore, while the letters all indicate

> that the alien is a talented individual who is making contributions in his present role, it has not been explained why the labor certification process is inappropriate in this case.
>
> 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 overall importance of a given profession, rather than on the merits of the individual alien. Therefore, the Service must consider each case on its own merit, without preference or prejudice to the perceived importance of any specific profession or project.
>
> While the record indicates that the alien petitioner is an experienced and productive lawyer, the record does not establish that the contributions of the alien petitioner are such that they measurably exceed those of his peers. On the basis of the evidence submitted, the alien petitioner has not established that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The national interest waiver is intended as a means of securing the talents of alien workers who offer significant prospective national benefit, not as a convenient means to avoid the labor certification process.

On appeal, counsel argues "...the position of Federal Judicial Law Clerk is not an entry level position, and the applicant's petition cannot be denied on this basis." We concur with counsel's assertion. However, the director was merely noting the fact that this was the petitioner's first employment since obtaining his law degree. Also worth noting is the fact that petitioner was not admitted to practice law as a member of the New York Bar until April 1998, only six months prior to the filing of his petition. This factor does not inherently discredit the petitioner, but given the very short time that the petitioner has been active in the legal profession, it would certainly support the director's conclusion that the petitioner has not yet had significant time to make an impact on his field.

While the petitioner's past record need not be limited to prior work experience, he must clearly establish, in some capacity, the ability to serve the national interest to a substantially greater extent than the majority of his colleagues in the legal profession. The Service here does not seek a qualified threshold of experience or education, but rather a past history of demonstrable achievement with some degree of influence on the field as a whole. The petitioner's uncontested expertise as senior law clerk and distinguished academic background do not constitute achievements and contributions having significant impact on the field of law. Academic performance, measured by such criteria as grade point average, or the attainment of advanced degrees from institutions with distinguished reputations, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements which establish his ability to benefit the national interest.

Counsel states: "The Service erred in asserting that the applicant's employment is not in the national interest because he supports the work of a federal judge." Counsel misstates the director's finding. While the Service recognizes the undoubted importance of clerkships in the federal judiciary, 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. For instance, much like clerkships in the federal judiciary, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. We do not dispute that the petitioner's work has been beneficial to Judge Lucero and the Tenth Circuit, but the petitioner has not provided sufficient evidence of his own specific prior achievements and contributions to the field of law as a whole.

Counsel states: "The Service erred in asserting that the applicant's publications do not constitute evidence of future substantial benefit to the U.S. national interest." The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable as a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. Frequent citation by independent researchers, on the other hand, demonstrates more widespread interest in, and reliance on, the petitioner's work. The petitioner has failed to provide any evidence of independent citation of his published works.

Counsel cites Professor Dan Esty and alleges that the Service neglected to assess the value of one of the petitioner's publications as the "leading scholarly analysis in its area." We disagree with counsel's conclusion based on the reasoning described in the above paragraph. Further, the complete citation from Professor Daniel Esty appears as follows: "[The petitioner's] study **with Mr. Cameron** of the precautionary principle of environmental policy stands as the leading scholarly analysis in its area." As previously noted, Professor Cameron describes the petitioner as follows: "[The petitioner] was without question the most brilliant **research assistant** I have ever worked with." Professor Cameron later adds: "[The petitioner] has all the right skills for a hugely successful career." These statements address the future promise of the petitioner, not a past record of his demonstrable achievements and significant contributions to the field of law. In his letter, Professor Daniel Esty states: "I know [the petitioner] first as a student" and "But I also know [the petitioner] as a professional collaborator in several capacities." The letter from Professor Daniel Esty only briefly mentions the value of petitioner's publication that was co-authored with Professor Cameron. Further, given Professor Daniel Esty's direct association with the petitioner as his former

student, teaching assistant, and "professional collaborator," it is not unreasonable for the Service to require more objective evidence demonstrating that other independent legal scholars have relied upon the petitioner's analysis. As noted by the director, the record contains no such evidence that "his contributions have influenced the field to a substantially greater extent than those of other qualified researchers."

Counsel states: "The Service erred in dismissing the support for the applicant from leading legal scholars." Once again, counsel refers to the incomplete citation from Professor Daniel Esty mentioned above. This issue has already been addressed in the preceding paragraph. Most disturbing are the following statements from counsel regarding his opinion of the Service's analysis of the testimonial letters submitted by the petitioner:

> Apparently, the Service takes the view that these figures' testimony is worthless because they know the applicant personally. There is simply no basis on which to assume that some of the most distinguished academics in the United States would lie to the Service.

Nowhere in the director's decision does it even suggest such a preposterous conclusion as the one alleged by counsel. The Service is certainly not questioning the credibility of the petitioner's witnesses; it is merely looking for the petitioner's impact on the field of law beyond his direct acquaintances. While we do not disregard statements from the petitioner's former professors, employers, and collaborators, the record would have certainly benefited from evidence outside of the petitioner's circle of colleagues that his work in the field of law has attracted significant attention.

The guidelines set forth in Matter of New York State Dept. of Transportation and the construction of the regulations demonstrate the Service's preference for verifiable, documentary evidence, rather than subjective opinions from witnesses selected by the petitioner. The letters submitted by the petitioner are primarily from current and former faculty members of universities and organizations where the petitioner has studied or worked. Many of these individuals describe the petitioner's notable academic achievements, but offer no evidence of his specific achievements and contributions to the field of law. A number of these witnesses assert their confidence in the future significance of the petitioner's work, but provide no specific evidence of his accomplishments having a significant impact on the legal profession.

The testimonial letters submitted demonstrate that the petitioner's expertise makes him a valuable asset to Judge Carlos Lucero, but the record does not indicate that the petitioner is responsible for especially significant achievements in his field. The petitioner has not provided evidence that his work, to date, has consistently attracted significant attention outside of his employers or the universities he attended. The testimonial letters submitted generally discuss the petitioner's academic achievements and the impact that the petitioner "will," "would," and "should" have on the legal profession in the future. While the witnesses accurately describe the petitioner's exceptional legal skills and academic accomplishments, there is no direct evidence to show the lasting or wide-ranging effect on the field of law which the petitioner's work had as of the date this

petition was filed. As noted earlier, the petitioner's subjective assurance that he will, in the future, serve the national interest cannot suffice to establish prospective national benefit.

Counsel argues that the petitioner has demonstrated why the labor certification process is inappropriate in this matter. Counsel notes that this issue was addressed in the second letter from the petitioner's employer, Judge Lucero, dated January 25, 1999. Counsel alleges that the Service has "utterly failed to examine the further evidence it itself requested" based on the director's statement that "it has not been explained why the labor certification process is inappropriate in this case." While the wording of the director's decision may be improved, it is by no means so flawed as to undermine the grounds for denial. In fact, the director's decision does acknowledge receipt of Judge Lucero's letters: "The record contains testimonial letters from his present employer and/or colleagues and his former instructor." Further, a review of the director's decision reveals references to "praiseworthy recommendations from his employer" and "activities directed by his present employer."

The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner must still demonstrate that he will serve the national interest to a substantially greater degree than do others in the same field. Congress plainly intended that, as a matter of course, advanced degree professionals should be subject to the job offer/ labor certification requirement. The national interest waiver is not merely an option to be exercised at the discretion of the alien or his employer. Rather, it is a special, added benefit which necessarily carries with it the additional burden of demonstrating that the alien's admission will serve the national interest of the United States. It cannot suffice for the petitioner to simply enumerate the potential benefits of his work. To hold otherwise would eliminate the job offer requirement altogether, except for advanced-degree professionals whose work was of no demonstrable benefit to anyone.

At issue is whether this petitioner's contributions to the legal profession as a legal scholar and senior law clerk are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. Without evidence that the petitioner has been responsible for specific significant achievements in the field of law, we must find that the petitioner's assertion of prospective national benefit is speculative at best. While the high expectations of the petitioner's employers, professors, and associates may yet come to fruition, at this time the waiver application appears premature.

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.