



B5

U.S. Department of Justice

Immigration and Naturalization Service

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: TEXAS SERVICE CENTER

Date: FEB 05 2003

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: 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, Texas 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 senior environmental engineer. At the time she filed the petition, the petitioner was a senior environmental engineer with the Georgia Department of Natural Resources in Atlanta, Georgia. 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 did not dispute that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but concluded 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.

(i) Subject to clause (ii), 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.

(ii) Physicians working in shortage areas or veterans facilities.

The petitioner obtained a bachelor's degree in chemical engineering from East China University in October 1982. She received a Master of Science in Environmental Engineering from the Georgia Institute of Technology in December 1997. 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, 22 I&N Dec. 215 (Comm. 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.

In this case, the director found that the petitioner's field of endeavor in environmental engineering is an area of substantial intrinsic merit, but made no findings as to whether the proposed benefit of the petitioner's employment would be national in scope.

We concur with the director's determination that the petitioner's occupation as a senior environmental engineer has substantial intrinsic merit, and would also note that the proposed benefit of the petitioner's employment in the area of safe drinking water technology would be national in scope. The remaining issue is whether the petitioner 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.

Documentation initially submitted with the petition includes the petitioner's resume, her degrees and grade transcripts, a certificate for outstanding performance from her current employer, a certificate for superior achievement in graduate research from the Georgia Institute of Technology, evidence of membership in professional associations, copies of six conference or teleconference

reports, copies of reports generated for the Georgia Department of Natural Resources, and copies of three published articles. While the petitioner's awards for academic achievement are commendable, it is not evidence of her professional recognition or influence on her field of endeavor. Even if such evidence represented recognition for achievements and significant contributions to her field, that is simply one criterion for exceptional ability, a classification that normally requires a labor certification. Similarly, the petitioner's professional affiliations relate to other factors in that classification. We cannot conclude that satisfying one, or even the requisite three criteria for a classification that normally requires a labor certification warrants a waiver of the labor certification requirement in the national interest.

The petitioner also submits copies of several conference presentations, one published article in which she was the lead author, and copies of two other articles in which she was a co-author. When assessing the influence and impact that the petitioner's written work has had, the act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may establish originality, but it cannot be concluded that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. Similarly, frequent citation by independent researchers can be viewed as a more accurate indication that the petitioner's work has attracted widespread interest or authoritative recognition. Here, there is no evidence that conference presentations or publication of one's work is unusual in the petitioner's field. The record also contains no evidence that, as of the date of filing, any independent researchers had cited any of the petitioner's articles. Eligibility must be established as of the filing date of the visa petition. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971).

The petitioner initially submitted several reference letters in support of her petition, most of which provide generalized broad assertions of the petitioner's reputation and the importance of the projects she is engaged in without specific examples of how her individual accomplishments have influenced the field to any significant degree.

██████████ Deputy Director of the Shanghai Institute of Organic Chemistry, asserts that the petitioner's work as a senior research fellow at the Institute resulted in several profound results involving wide-ranging issues such as water system design and environmental microbiology. There is no corroborating evidence in the record to show what these "profound results" were, who was influenced by them, or whether there was any widespread implementation of the designs.

██████████ a professor of environmental engineering and public policy at the Georgia Institute of Technology, praises the petitioner's academic accomplishments and notes that her graduate research project, jointly sponsored by the Georgia Institute of Technology and the Georgia Pacific Corporation, provides a new method by which water planners, managers, senior officials, and others can re-evaluate policies and plan for future environmental challenges.

██████████ vice-president of environmental control for Georgia-Pacific Corporation, confirms the petitioner's participation in a joint research project to study the ability of ozonation to affect the toxicity level of pulp mill wastewater. He asserts that the petitioner's "particular interest and

preparation in the past in water system and wastewater treatment fields provided our project with an essential bridge between the fundamental and practical aspects of the processing design.”

the personnel director for the Georgia Department of Natural Resources, offers a description of the petitioner’s duties:

[The petitioner] is responsible for developing models and programs to forecast, predict and project ecological and environmental impacts on drinking water resources, and implementing safe drinking water database programs for compliance, monitoring, enforcement and corrective action under environmental laws, rules, and regulations. She also performs technical expertise in the application of engineering principles in investigation, evaluation, planning design, as well as supervision of the construction and operation of facilities.

the general manager of the Drinking Water Program within the Environmental Protection Division, Georgia Department of Natural Resources, and Thomas C. Leslie, the assistant director of the Environmental Protection Division, Georgia Department of Natural Resources, also offer letters in support of the petitioner states:

Recently, U.S. EPA and several southeastern state environmental protection agencies are working together on a project called Safe Drinking Water Information System (SDWIS/State) to manage and protect the quality of drinking water from both ground and surface water sources to provide Americans with safer drinking water. . . . SDWIS/State is a unique concept and will be available in the near future to all states’ Drinking Water Programs as a versatile instrument to help them manage and monitor their drinking water data, and facilitate more complete data reporting to EPA.

[The petitioner] started to work for Georgia EPD as an Environmental Specialist two years ago, and was promoted promptly to Environmental Engineer six month [sic] later, and was promoted again to Senior Environmental Engineer in September 1999, in recognizing excellent services and significant role she plays in our Drinking Water Engineering and Compliance Program. [The petitioner’s] major duties, among other responsibilities are to forecast, estimate and assess environmental impacts on drinking water resources; and to direct and implement Safe Drinking Water Information Systems (SDWIS/State) for compliance, monitoring, enforcement and corrective action in conjunction with environmental laws, rules, and regulations. [The petitioner] has made invaluable contributions towards the development and implementation of SDWIS/State project which will considerably benefit Georgia, Southeastern area [sic], and the United States.

[The petitioner’s] continue [sic] presence here at Georgia Environmental Protection Division will be of critical importance to our ability to effectively address interstate and intrastate drinking water quality control, federal and state safe drinking water

regulation compliance, as well as water resource management matters. She has been one of the leading members of our drinking water program at Georgia EPD and SDWIS committee, and replacing her with even an equally qualified person will inevitably cause substantial disruption of our tasks.

offers very similar observations:

Recently, Georgia EPD is collaborating with U.S. EPA and state environmental agencies of Florida, Tennessee, North Carolina and South Carolina for a congressionally approved and funded three years effort to develop a strategic interstate SDWIS/State.

[The petitioner] is an experienced and talented senior level professional.

[The petitioner] holds an advanced degree in engineering, and possesses more than 17 years extensive experience in water system development and resource management. She is now responsible for [sic] Georgia SDWIS/State issues, and is a representative member of EPA region 4 SDWA working committee. She developed several key function blocks for SDWIS/State that will enable water system [sic] to track and monitor the quality of drinking water in order to compliance [sic] with existing and future regulations . . .

vice-president of the American Water Works Association, acknowledges the petitioner's membership and active participation in the group. He praises her role in helping to organize AWWA workshops and conferences and her speaking on various aspects of water system resource management.

the head of the Bureau of Water Facilities Regulation, Florida State Department of Environmental Protection, recounts the importance of the development of the "Safe Drinking Water Information System (SDWIS/State)" database and summarizes the petitioner's involvement:

In her current position is primarily responsible for developing statistical models and computer programs to forecast, estimate and project the impacts of environmental development on underground and surface drinking water resources; as well as directing and implementing Drinking Water Database Programs for compliance, monitoring, enforcement and corrective action in conjunction with environmental laws, rules, and regulations.

....

To develop such comprehensive project [sic] as safe drinking water information system [sic] calls for specific, profound knowledge of the federal and state environmental laws . . . experience and training in environmental engineering and

technological fields, as well as complex computer model developing and database management skills. [The petitioner] possesses all those critical abilities and expertise which are directly applicable to this extremely urgent endeavor.

does not indicate how he is familiar with the petitioner or her work.

Matthew Wozniak, chief engineer of the Oklahoma Department of Environmental Quality, met the petitioner at two American Water Works Association conferences and asserts that she is extremely proficient in public safe drinking water systems and database management. He adds that the petitioner "has a serious commitment to her profession that promotes the national environmental and health protection interest. She has been playing a leading role in planing [sic] and developing a safe drinking water management system."

the acting director of the Regulatory Implementation Division, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, submits a letter in support of the petition. He states:

U.S. EPA is currently collaborating with state environmental agencies of Florida, Georgia, Tennessee, North Carolina and South Carolina for a congressionally approved and funded three years effort to develop a strategic interstate Safe Drinking Water Information System (SDWIS/State). SDWIS/State is a database designed and implemented by EPA and several southeast state environmental agencies to meet their need in the oversight and management of the Safe Drinking Water Act (SDWA).

Several key function blocks that Ms. Luo has been developing for the SDWIS program will enable the system to track compliance with existing and future regulations, track drinking water goals developed to meet the Government Performance and Results Act, and alter [sic] both managers and the public on the occurrence of contaminants in the water which is subsequently treated to become our drinking water.

It is apparent that the petitioner has excelled academically and is a talented senior environmental engineer. Nevertheless, her exceptional ability is not by itself sufficient cause for a national interest waiver. The benefit that the petitioner presents to her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in 8 C.F.R. 204.5(k)(3)(ii)(F) for an alien of exceptional ability. It is not sufficient to state that the alien possesses unique credentials or an impressive background, or, as here, to merely list a petitioner's duties without specific corroboration of her achievements' significance and impact. The labor certification process exists because protecting jobs and employment opportunities of U.S. workers having the same objective minimum qualifications as an alien seeking employment is in the national interest. The 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. In this case, the petitioner's initial witness letters describe her background, assert the importance of the SDWIS/State database and the

potential implications of the petitioner's work, but do not persuasively distinguish the petitioner from other highly competent senior environmental engineers.

Eligibility for the waiver must rest with the alien's qualifications rather than with the position sought. This applies whether the position is publicly or privately funded. It is generally not accepted that a given project is of such importance or of such urgency that any alien qualified to work on it must also qualify for a national interest waiver. The 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 sought. *Matter of New York State Department of Transportation*, at note 6.

It is also noted that all but three of the petitioner's initial witnesses appear to be from her immediate circle of colleagues, employers, mentors, and collaborators. This does not detract from the value of their opinions, as they are in the best position to describe the details of the petitioner's work. However, the record would be more persuasive if it were supported by evidence from independent authorities' recognition of or reliance upon the petitioner's accomplishments, that would demonstrate that her contributions to the field are of such unusual significance as to merit a national interest waiver.

The director requested further evidence that the petitioner has met the guidelines set forth in *Matter of New York State Department of Transportation*. Included in the petitioner's response are her personal statement summarizing her credentials, a copy of a conference report presented in February 2001, and an article appearing in the "AWWA Journal" published in February 2001. We note that the petitioner's conference report and article were not presented or published prior to the October 2000 filing date of her petition and cannot be considered to contribute to her eligibility. *See Matter of Katigbak, supra*.

The petitioner submits four new witness letters in response to the director's request for evidence. James Ritscher submits a second letter basically reiterating the previous assertions and states:

[The petitioner] is a highly recognized expert of drinking water information systems. . . . She is specialized in a small yet critical area of safe drinking water management system and only a few American experts involved [sic]. If she was not in a position to lead on designing, developing and implementing safe drinking water database system to compliance [sic] with federal and state safe drinking water laws, rules and regulations, there would be few comparable experts to chose from. There would only be less well regarded ones with limited knowledge of the subject, and ones who might not be able to play a similar role in the job performed by Ms. Luo.

The concerns that Mr. Ritscher expresses with regard to the availability of comparably qualified U.S. workers are ones that the labor certification system was designed to address. The inapplicability or inconvenience of the labor certification process cannot be viewed as sufficient cause for a national interest waiver; the petitioner must still demonstrate that she 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. General attestations regarding the petitioner's skill as a senior environmental engineer cannot suffice, because even exceptional ability by itself is not sufficient grounds for a national interest waiver. The national interest waiver is not merely an option to be exercised at the discretion of the alien or her employer. The clear wording of the statute indicates that the job offer requirement applies to aliens who are advanced degree professionals as well as those with exceptional ability.

In another letter with portions that contain language virtually identical to language found in some of the other letters, Georgia state senator Terrell Starr echoes previous sentiments regarding the petitioner's excellent work, and asserts that the slowness of the labor certification process would imperil the SDWIS/State program by potentially risking the expiration of the petitioner's nonimmigrant visa. There is no indication that Congress intended that the national interest waiver be used to ameliorate the delays inherent in the labor certification process in some areas of the country. To hold otherwise would eliminate the job offer requirement altogether and invite widespread abuse of the process.

The petitioner also submits a letter from Richard S. Austin, a lieutenant colonel with the U.S. Army Corps of Engineers in Hartwell, Georgia, who describes the petitioner's background, emphasizes the importance of the SDWIS, and asserts that the petitioner is "well recognized" for her work and contributions to the project. Colonel Austin does not indicate how he became familiar with the petitioner or her work, or how her individual achievements as a senior environmental engineer have had any significant influence on his work or on the projects of the Army Corps of Engineers.

with the Public Health Service, Centers of Disease Control and Prevention, offers more praise of the petitioner's work with the SDWIS/State database, asserting that "[the petitioner] uniquely pioneered several important procedures in her designing of the SDWIS/State to allow it provides [sic] specific data regarding the types of water systems and deficiencies associated with outbreaks." also does not indicate how she became familiar with the petitioner's work or background.

These additional letters basically repeat the petitioner's previous submissions and do not demonstrate that at the time of filing the petition, the petitioner's individual achievements had significantly impacted her field of endeavor. The opinions of experts in the field, while not without weight, cannot solely form the basis of a successful national interest claim. Evidence in existence prior to the submission of the petition is more persuasive than new materials prepared especially for the submission of the petition. In this case, the record reveals little evidence of formal recognition or awards for the petitioner's individual research, arising from various reputable groups initiating recognition of the petitioner's contributions, as opposed to private letters solicited from selected witnesses in order to support the visa petition. While the petitioner may be a highly talented senior environmental engineer, exceptional ability alone is not sufficient cause for a national interest waiver. *See Matter of New York State Department of Transportation, supra.*

In denying the petition, the director noted that the record established that the petitioner is a competent and fully qualified environmental engineer, but she had not established that the benefit of her experience and qualifications outweighs the national interest inherent in the labor certification process.

On appeal, the petitioner recounts the witness submissions, argues that they established the grounds for the waiver, and contends that the director gave inappropriate weight to the filing of an I-129 petition by her employer to extend her H-1B status. The director's denial was not primarily based on the observation that the petitioner had an I-129 extension of status application pending. The director acknowledged numerous pieces of evidence, and arrived at her decision based on a review and analysis of the factors relevant to the visa classification.

We cannot conclude that the witness letters and the other evidence of the petitioner's work in the record establish that this petitioner's contributions to the field of environmental engineering 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. Without more specific evidence that the petitioner has been responsible for significant achievement in the field of environmental engineering, we must conclude that a national interest waiver is not warranted in this case.

As is clear from the plain wording of the statute, it is 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 the national interest. Similarly, 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. Based on the evidence submitted, the 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 burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. In this case, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.